

Application No. 09/618,326
Amendment dated July 23, 2004
Reply to Office Action of February 25, 2004

REMARKS

Claims 1-56 are pending in the application; the status of the claims is as follows:

Claims 1-51 and 53-55 are withdrawn from consideration as allegedly being directed to non-elected species;

Claim 56 is objected to as being dependent upon a withdrawn base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The indication by the Examiner that claim 56 would be allowable if rewritten in independent form, including all of the limitations of the base claim and any intervening claims, is acknowledged with appreciation. By this amendment, claim 56 has been revised to independent form, including all of the limitations of base claim 46, and intervening claims 48 and 49. Additionally, claim 52 has been amended to depend from claim 56. Finally, new claim 57, based on claim 51, has been added and depends from claim 56. Accordingly, claims 52, 56 and 57 should now be allowable.

Also by this amendment, new claim 58 has been added which is believed to be within the elected species, i.e., species X.

The acknowledgement, in the Office Action, of a claim for foreign priority under 35 U.S.C. § 119(a)-(d), and that the certified copy of the priority document has been received, is noted with appreciation.

To date, no Notice of Draftsperson's Patent Drawing Review has been received. Applicant respectfully requests receipt of this document when it becomes available. Please note that the original drawings filed in the patent application are "formal" drawings.

The objection to the title of the invention as not being descriptive is noted and a new title is presented in this Amendment which is clearly indicative of the invention to

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which the claims are directed. Accordingly, reconsideration and withdrawal of the objection is respectfully requested.

It is respectfully submitted that the Examiner has not employed the correct test for evaluating generic and species claims. Accordingly, reevaluation and reconsideration of which claims are generic to the elected species is respectfully requested. Specifically, the MPEP provides:

“[A] generic claim cannot include limitations not present in each of the added species claims. Otherwise stated, the claims to the species . . . must contain all the limitations of the generic claim.” MPEP 806.04(d)

“Claims to be restricted to different species must be mutually exclusive.”
MPEP 806.04(f)

The Examiner provides an example in the office action stating that “claims that are missing one or more elements of the elected species (i.e., no amplifying transistor) . . . would . . . relate to separate species (all elements the same except for the missing amplifying transistor in Species IX).” This is not correct. Circuits with or without the amplifying transistor are not mutually exclusive. Instead, a generic circuit without the amplifying transistor can be modified to add the amplifying transistor to thereby form a species. Moreover, the circuit with the amplifying transistor has every element of the circuit without the amplifying transistor. Thus, the example given by the examiner is not an example of two distinct species but, instead, is the very epitome of a generic claim and related species claim.

After review of the claims, applicants reiterate that claims 1-3, 31-33, 35, 36-38, 40, 45, 46-50, and 53-56 are believed to read on the elected species; that claims 1 and 31 are believed to be generic to all of the species (I – X) while claims 35 and 46 are believed to be subgeneric to species VII, VIII, IX, and X. Accordingly, reevaluation and reconsideration of which claims are generic to the elected species is respectfully requested.

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Applicants also note that the examiner has emphasized that the election of Species X was made without traverse, which is correct. However, it is respectfully pointed out that simply because an election is made without traverse that does not mean that applicants have thereby waived the right to contest which claims read on the elected species.

In view of the foregoing amendments and remarks, this application is considered to be in condition for allowance, and an early reconsideration and a notice of allowance are respectfully requested.

This Amendment increases the number of independent claims by 2 from 7 to 9 and increases the total number of claims by 2 from 56 to 58, but does not present any multiple dependency claims. Accordingly, a Response Transmittal and Fee Authorization form authorizing the amount of \$208.00 to be charged to Sidley Austin Brown & Wood LLP's Deposit Account No. 18-1260 is enclosed herewith in duplicate. However, if the Response Transmittal and Fee Authorization form is missing, insufficient, or otherwise inadequate, or if a fee, other than the issue fee, is required during the pendency of this application, please charge such fee to Sidley Austin Brown & Wood LLP's Deposit Account No. 18-1260.

Any fee required by this document other than the issue fee, and not submitted herewith should be charged to Sidley Austin Brown & Wood LLP's Deposit Account No. 18-1260. Any refund should be credited to the same account.

If an extension of time is required to enable this document to be timely filed and there is no separate Petition for Extension of Time filed herewith, this document is to be construed as also constituting a Petition for Extension of Time Under 37 C.F.R. § 1.136(a) for a period of time sufficient to enable this document to be timely filed.

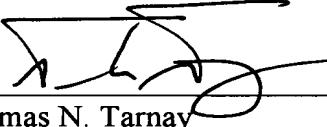
Any other fee required for such Petition for Extension of Time and any other fee required by this document pursuant to 37 C.F.R. §§ 1.16 and 1.17, other than the issue fee,

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and not submitted herewith should be charged to Sidley Austin Brown & Wood LLP's Deposit Account No. 18-1260. Any refund should be credited to the same account.

Respectfully submitted,

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